

**EPA Government-to-Government Consultation with the Miccosukee Tribe of Indians of Florida on the
State of Florida's Request for Assumption of the Clean Water Act Section 404 Program and
Consultation Under Section 106 of the National Historic Preservation Act (NHPA)
October 8, 2020**

Attendees

- **Miccosukee Tribe of Indians of Florida:** Jeanine Bennett, Amy Castenada, Kevin Donaldson, Gene Duncan, Lyanne Mendez, Craig van der Heiden
- **EPA:** Suzanne Armor, Whitney Beck, Rosemary Calli, Maria Clark, Michael Creswell, Jeaneanne Gettle, Mita Ghosh, Matt Hicks, Kathy Hurd, Thomas McGill, Kavita Nagrani, Eve Zimmerman

Comments Shared for EPA's Consideration

- The Tribe has cultural resources and an interest in a variety of lands. The Tribe believes permits on those lands should trigger government to government consultation and an opportunity for tribes to be involved in the project.
- The Tribe takes the position that all of Florida is still Indian country. The Tribe has cultural sites that would be in assumed waters and permits affecting those sites would not trigger consultation. The Tribe would like to get notice and have a chance to comment on all permits that could affect cultural resources. For example, reservoir releases in state-assumed waters may impact Tribal waters. In addition, the Tribe considers wetlands to be cultural resources, and these resources are extensively located throughout Florida.
- In the Operating Agreement between the Florida Department of Environmental Protection (FDEP) and the State Historic Preservation Officer (SHPO), the timeframe for coordination with tribes is very narrow and too small of a window.
- The Tribe currently gets notice from the Corps on all of the proposed 404 projects and does not see the same triggers in what the State is presenting for their program or in the NHPA Section 106 process. The Tribe would also like government-to-government consultation for all projects that affect Tribal resources.
- The Tribe believes that the Everglades National Park and Big Cypress National Preserve are Indian country as described in the enabling legislation for those lands.
- The Tribe's federally-codified Settlement Agreement with the State of Florida indicates that certain lands which the State has perpetually leased to the Tribe shall be treated as if they are reservation lands for certain purposes. The Tribe's position is that these leased lands are therefore Indian country. The Tribe explained that the State took the Tribe's land to build a portion of I-75, and the Tribe had a particular understanding of being provided reservation land at the time of the Settlement Agreement. The Tribe further explained that this issue has not been litigated because the State has agreed with the Tribe's interpretation.
- The Tribe has not seen a copy of the final Operating Agreement between FDEP and the SHPO and has also not yet seen the draft NHPA Programmatic Agreement.
- The Tribe does not want to be lumped with other Tribes on the Programmatic Agreement because Miccosukee Tribe has its own unique concerns.
- The Tribe is concerned that the state legislature has passed a law that requires construction of a reservoir which has cultural burial grounds right in the middle of it. The Tribe is concerned that the State is bound by law and will not take appropriate measures

to protect these cultural burial grounds. The Tribe does not support relocation, inundation or any effects on human remains.

- The Tribe's understanding is that FDEP is not going to seek any more resources to run the 404 program, and they do not believe that FDEP can adequately manage the programs they have now.
- The Tribe is concerned that FDEP will allow for Water Management Districts to take over a portion of the 404 permitting program permitting requirement and did not see anything in FDEP's proposed program that would prohibit that.

Specific Action Items from the Discussion

- The Tribe will provide their comments and concerns in writing.
- The Tribe will provide information that supports the Tribe's position about lands in Florida that it believes meet the statutory definition of Indian country.
- The Tribe will provide information that supports their interpretation of the Settlement Agreement referenced above.
- EPA will follow-up with the Tribe regarding the issues they've raised regarding Tribal Lands.
- EPA will provide the Tribe with a copy of the Operating Agreement between FDEP and the SHPO, which is part of the package submitted by the State.
- EPA will develop a draft NHPA Programmatic Agreement and will consider comments/recommendations made by the Tribe. EPA will provide the Tribe with a draft copy of the Programmatic Agreement.